

Payment Limitation

Financing Provisions and Cash-Rent Tenant Rule

FSA California

Payment Limitation Overview

A limitation on the total annual payments that a “person” may receive from federal agricultural programs has been in effect since enactment of the Agricultural Act of 1970. Financial arrangements regarding borrowed capital may affect payment limitation determinations and result in ineligibility or reduced payments.

Applicable Rules

Depending on the USDA-administered program, producers must meet requirements to be eligible to receive payments. These rules include “person” determinations, actively engaged in farming rules, the cash rent tenant provision, permitted entity requirements, foreign person rule, and adjusted gross income provisions.

“Person” Determinations

For an individual or entity to be considered a **separate** “person,” the individual or entity must:

- have a separate and distinct interest in the land or crop involved;

- exercise separate responsibility for this interest;
- maintain funds or accounts separate from that of any other individual or entity for this interest.

“Actively Engaged in Farming”

A producer must be considered “actively engaged in farming” to be eligible for payments and benefits under some programs. Generally, to be considered “actively engaged in farming,” the producer must provide significant contributions to the farming operation, which are commensurate to the claimed share of the farming operation and the contributions must be significant and **at risk**. Eligible “persons” must provide a contribution of capital, equipment, or land and a contribution of active personal labor or active personal management.

Custom Farming

The equipment used in the performance of the custom farming service cannot be considered a significant contribution of equipment toward meeting the “actively engaged in farming” requirements.

Capital Contributions

For capital to be considered a significant contribution to the farming operation, the capital must be contributed directly to the farming operation from a fund or account separate and distinct from that of any other individual or entity with an interest in a farming operation.

Borrowed Capital:

- must be contributed directly to the farming operation and not have been acquired as the result of a loan made to, guaranteed by, or secured by an entity or someone who has an interest in the farming operation.
- which is secured by assets from other parties or individuals (such as cross-collateralization or third-party collateral) may result in ineligibility or reduced payments.

- equipment and land contributions which are obtained by ineligible borrowed capital will not be considered a significant contribution for the applicable input.

Note: Eligibility exceptions may apply for family members in joint operations. Consult your local FSA Office for more information.

Bank Accounts

- Producers must have and maintain separate bank accounts.
- Commingled bank accounts and internal “paper” accounts or accountings will result in ineligibility or reduced payments.

Cash Rent Tenant Rule

In order to receive payments subject to the cash rent tenant rule, such as the Direct and Counter-cyclical Program, producers who cash rent land must provide a significant contribution of either of the following:

- Active personal labor, or
- Equipment and active personal management.

Note: If equipment and labor come from the same source, then there must be two separate contracts at fair market value AND the producer must have **COMPLETE** control of the equipment for the crop year.

Example: A cash-rent tenant leases equipment and labor from the same source for only a portion of the year and does not provide any active personal labor. In this situation, the cash-rent tenant does not meet the cash-rent tenant provision because the producer does not have complete control of the equipment.

Frequently Asked Questions

- Q. If two partnerships, whose members are the same, are financed with a single loan or line of credit?

NO, the partnerships and their members are not eligible because they are not maintaining funds and accounts separate from that of any other individual or entity.

- Q. If an individual owns 100% of a corporation, and is considered combined with the corporation, can the individual and the corporation be financed with a single loan or line of credit?

A. Yes. As the individual and the entity are already combined together as one "person" for payment limitation purposes, there would not be any additional limitations imposed by the structure of the financing.

- Q. Can an individual partner in a partnership use his/her share of the partnership's assets to secure individual capital?

A. No. The individual must provide security separate and distinct from any other person with an interest in his farming operation, or in whose farming operation that individual has an interest in.

- Q. Can a farming operation be financed by the landlord without affecting the tenant's payment limitation determination?

A. No. Financing cannot come from any individual, joint operation or entity that has an interest in the farming operation. A landlord or landowner is automatically considered to have an interest in the farming operation, regardless of the type of lease agreement.

- Q. Can spouses make separate contributions to a farming operation from a joint bank account?

A. Yes. The Office of General Counsel has advised, in California, that a husband and/or wife can make a capital contribution from joint accounts.

- Q. If multiple farming operations operate out of a joint bank account instead of separate accounts, can those operations be considered separate farming operations?

A. No. Eligible farming operations must maintain and utilize separate and distinct accounts.

- Q. Must every partner in a general partnership file a Schedule K-1 to be considered a separate "person" for payment limitation purposes?

A. Yes, including spouses who are members of the partnership. If a member does not file a K-1, he or she is not considered a legitimate partner in accordance with IRS rules and also will not be considered a separate "person" for payment limitation.

- Q. If a farm operating plan is approved by FSA, and changes occur to the structure of the financing later in the crop year, is the producer required to inform FSA of these changes?

A. Yes, these changes must be immediately reported to FSA because the changes may affect the initial determination. Failure to report changes may result in ineligibility or a more restrictive determination.

- Q. Can FSA request financial documents to verify capital contributions?

A. Yes. FSA may also request tax records to ensure all requirements have been met and the producer has followed their Farm Operating Plan (CCC-502), as certified.

For More Information

Further information is available from your local FSA office and all questions should be directed to them. General information is also available on FSA's web site (www.fsa.usda.gov) or California FSA's web site (www.fsa.usda.gov/ca).

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